

CITY OF CHULA VISTA

Proposition Q

(This proposition will appear on the ballot in the following form.)

PROP Q

Shall the Charter of the City of Chula Vista be amended to make the City Attorney an elected City Officer, sufficiently independent of the Council and other City officials?

This proposition requires approval by a simple majority (over 50%) of the voters voting on the proposition.

The proposed charter amendment follows the arguments and rebuttals.

CITY ATTORNEY IMPARTIAL ANALYSIS

This proposition would amend Sections 500 and 503 of the City Charter to make the City Attorney an elected City officer. This proposition would also change the City Attorney's minimum qualifications, powers and compensation.

The Charter currently authorizes the City Council to appoint the City Attorney, establish the salary for the City Attorney and remove the City Attorney by majority vote. The Charter currently requires the City Attorney to be licensed to practice law in California and establishes the powers and duties of the City Attorney.

This proposition would make the City Attorney an elected rather than an appointed City officer. The City Attorney would be nominated and elected to a four-year term in the same manner and at the same election as members of the Council. The Council would establish the City Attorney's compensation, but such compensation could not be less than the median compensation of the city attorneys of the six California cities whose populations are closest to the City's population, provided that three are higher and three are lower. The City Attorney's compensation during a term could only be reduced in proportion to and as part of a general reduction of City salaries. The Council could only declare the City Attorney's Office vacant for specified reasons, and would be required to appoint or call an election to fill such a vacancy, as specified.

To qualify as City Attorney under this proposition, a person must be a United States citizen, a qualified elector, and a California resident, licensed to practice law in California for at least seven years prior to assuming office.

This proposition would also authorize the City Attorney to exercise discretion to commence or maintain legal proceedings, subject to Council's approval or ratification. It would delete a provision of the current Charter that authorizes the Council to control all City legal business and legal proceedings. The proposition provides that, in addition to the Council and other City officers, the City Attorney shall advise all City boards, commissions, and other City agencies and render written legal opinions when requested in writing. The City Attorney would be authorized to employ experts and, when empowered by Council, special legal counsel. When the City Attorney has a conflict of interest in litigation involving another City office, such other officer could retain special legal counsel at the City's expense, upon the City Attorney's recommendation and with Council approval. This proposition clarifies that the City Attorney may remove unclassified City Attorney appointed officers or employees. This proposition does not limit the Council's budgetary authority regarding City Attorney supervised officers and employees.

If this proposition is approved by a majority vote, the current City Attorney or successor would continue to be qualified to hold office under the current Charter and general laws until the next general election in June of 2010 and the first elected City Attorney would assume office for a four-year term commencing on the first Tuesday of December of 2010.

ARGUMENT IN FAVOR OF PROPOSITION Q

Chula Vista is becoming a major city in California. Other major cities in the state have an elected City Attorney and Chula Vista residents deserve the same type of independent representation.

An independent City Attorney, chosen by the people, will be free to fight unethical behavior and corruption in city government and be independent of Mayoral or City Council influence.

It's time for an independent Chula Vista City Attorney to advise the City and act in the best interest of the public. Unlike San Diego, the elected Chula Vista City Attorney will need Council approval to initiate lawsuits.

An elected City Attorney would help stop the unethical behavior, corruption and back room deals, like these:

- May 2005, the appointed city attorney helps form the CVRC. Originally the mayor and City Council were members and most of them collected monthly stipends even though meetings were not held. The stipend payments were later reimbursed because of public pressure.
- May 2008, the appointed city attorney lets the city manager release a politically biased and unnecessary study prepared at taxpayer expense.
- July 2008, the appointed city attorney helps prepare a ballot measure to change the tax on utilities in Chula Vista. Drafted to sound like a tax decrease, the measure actually would have changed the definition of utilities to include new taxes.
- August 2008, the appointed city attorney helps the city council meet behind closed doors concerning a controversial power plant expansion. No action was reported, but a letter sent two days later from the City Manager's office supports the proposed expansion.

These are examples of the unethical practices and back room deals going on at City Hall because the City Attorney is beholden to the City Council and Mayor for their job and salary.

The people need representation. Vote Yes on Proposition Q.

NORMA A. CAZARES
Educator
Past President, South Bay Forum

LARRY BREITFELDER
President,
Chula Vista Taxpayers Association

GERALD SCOTT
Retired Naval Officer

THERESA B. ACERRO
President,
Southwest Chula Vista Civic Association

DELORES C. DEMPSEY
President, Chula Vista Mobile Home Park Association

REBUTTAL TO THE ARGUMENT IN FAVOR OF PROPOSITION Q

Vote No on Proposition Q!

Proposition Q will create more politicians and more politics! That's not good for Chula Vista.

Prop Q was initiated by **wealthy real estate landlord Earl Jentz**, who has already spent over \$600,000 on campaigns to influence our city. Under Prop Q, his wealth could elect a City Attorney of his choosing to carry out his political agenda.

Prop Q will encourage unethical behavior and corruption, not fight it. An elected City Attorney can attack political opponents and protect allies instead of protecting our City's interests.

Big contributors would have a huge stake in electing a City Attorney favorable to their interests, making the City Attorney less independent.

Elected City Attorneys don't make for better decision-making! In San Diego, an elected City Attorney approved the Chargers ticket guarantee, approved pension underfunding, and wasted millions on politically motivated lawsuits.

Prop Q would allow an elected City Attorney to file lawsuits without prior Council approval.

Only 2% of California's cities have elected City Attorneys because most cities believe it doesn't work well.

We should NOT replace a competent professional municipal lawyer with someone who is simply good at running a political campaign.

Prop Q has NO residency requirements and NO term limits for the City Attorney. Currently, all Chula Vista elected officials must live in the City and they cannot serve more than two terms.

We need competent legal advice to keep Chula Vista moving forward.

We don't need more politics.

Protect Chula Vista taxpayers.

Please Vote NO on Prop Q.

CHERYL COX
Mayor, City of Chula Vista

JERRY R. RINDONE
Deputy Mayor, City of Chula Vista

LOURDES VALDEZ, President
Chula Vista Chamber of Commerce

JIM BIDDLE, Treasurer
Chula Vista Taxpayers for Responsible Planning II

GREGORY A. STEIN
Vice Chair & Treasurer, San Diego County Taxpayers Association

ARGUMENT AGAINST PROPOSITION Q

Say NO to City Attorney Politics in Chula Vista – Vote No on Proposition Q

Chula Vista's City Attorney should be a qualified, unbiased professional, not a politician. Our local City Attorney should not be influenced by politics and campaigning.

The City Attorney's responsibilities include giving impartial legal advice to our elected and city officials. That advice should be based on **what's best for the City and its residents**, not on a political agenda. We elect a Mayor and City Council to set policy, not the City Attorney.

When making decisions that shape the future of our city, we need a City Attorney whose only agenda is **protecting the interests of the city and its residents**.

We need to ensure that the City Attorney's only allegiance is to the City, and that fair, objective, and non-political advice are immune from special interests and political persuasion.

An elected City Attorney could cost taxpayers dearly, by making meritless accusations and legal maneuvers without the consent of the City Council.

An elected City Attorney who has to deliver campaign speeches, solicit campaign contributions, and make promises when seeking votes could be pressured by politics and partisan fighting. A professional City Attorney advises the City Council, discusses proposed legal strategies with them, and does his or her job in the office, not in front of the camera.

Proposition Q contains NO requirements, experience, or expertise in municipal law in order to run for City Attorney.

Proposition Q will not increase accountability or reduce political influence.

It doesn't even require the City Attorney to live in Chula Vista.

It doesn't require that the City Attorney have experience in city laws, and . . .
it doesn't have term limits!

Please join us and **Vote NO on Prop Q**.

It's a **big risk** and a **big mistake** for Chula Vista.

CHERYL COX
Mayor,
City of Chula Vista

JERRY R. RINDONE
Deputy Mayor,
City of Chula Vista

RUDY RAMIREZ
Councilman,
City of Chula Vista

LOURDES VALDEZ
President,
Chula Vista Chamber of Commerce

GREGORY A. STEIN
Vice Chair & Treasurer, San Diego County Taxpayers Association

REBUTTAL TO THE ARGUMENT AGAINST PROPOSITION Q

Is it a coincidence that the opponents of Proposition Q are the same people who stand to benefit from keeping the status quo, and who voted for hidden tax increases, deceptively advocating them as a tax decrease?

At the direction of city politicians, the **Appointed** Chula Vista City Attorney has:

- Repeatedly helped the Mayor and Council to hide business behind closed doors
- Worked against taxpayers this Summer, using deceptive language in an attempt to enact hidden tax increases
- Helped shelter inappropriate employee behavior
- Ignored public document requests until taken to court
- Helped the politicians to secretly aid developers and special interests at the expense of taxpayers

It's time for a change!

We need a watchdog that is not afraid to act in the best interest of the residents. A Chula Vista **Elected City Attorney** will be responsible to the voters, not the Mayor and Council.

Proposition Q will increase accountability and the City Attorney's ability to do what's best for the city and its residents.

Unlike San Diego, Chula Vista's elected City Attorney would be required to receive approval from the City Council to initiate lawsuits. The City Council would retain authority over spending - to protect taxpayers and ensure proper checks and balances.

The opponents of Proposition Q have no faith in our intelligence. We trust voters to elect a well-qualified City Attorney.

The real risk is failing to fix the broken system at City Hall.

Please join us and **Vote YES for Proposition Q**

LARRY BREITFELDER
President,
Chula Vista Taxpayers Association

GERALD SCOTT
Retired Naval Officer

NORMA A. CAZARES
Educator
Past President, South Bay Forum

DELORES C. DEMPSEY
President,
Chula Vista Mobile Home Park Association

THERESA B. ACERRO
President, Southwest Chula Vista Civic Association

PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF CHULA VISTA

Existing provisions proposed to be deleted are in ~~strikeout type~~ and the new provisions proposed to be added are in *italic type*. The proposed charter amendment reads as follows:

ELECTED CITY ATTORNEY ACT

Section 1. Purpose and Findings – Elected City Attorney

This charter amendment is intended to provide for the election of the City Attorney by the residents of the City of Chula Vista. The City of Chula Vista should have an elected City Attorney who is responsible to Chula Vista residents instead of an appointed city attorney responsible only to the Mayor and City Council. It is in the best interests of the City of Chula Vista that the City Attorney be sufficiently independent of the City Council and other city officials to able to both advise the city and act in the best interests of the public.

Section 2. Amendment of the Charter

A. Section 503 of the Charter of the City of Chula Vista is hereby amended to read as follows:

Section 503 City Attorney; *Election, Powers and Duties*

~~To become eligible for City Attorney, the person appointed shall be an attorney at law duly licensed as such under the laws of the State of California. The City Attorney shall have power and be required to~~

(a) Designation as Officer. The City Attorney shall be an officer of the City, in addition to any other officers designated pursuant to this Charter. It is the intent of the voters that the City Attorney shall be sufficiently independent of the City Council and other city officials to advise the City while also acting in the best interests of the public.

(b) Powers of the City Attorney. The City Attorney shall:

(a)(1) Represent and advise the City Council and all city officers in all matters of law pertaining to their offices and advise all boards, commissions, and other agencies of the City on legal matters referred to him or her, and render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Manager or any other officer, board or commission of the City;

(b)(2) Represent and appear for the City and any city officer or employee, or former City officer or employee, in any or all actions and proceedings in which the City or any such officer or employee in or by reasons of his or her official capacity, is concerned or is a party;

(c)(3) Attend all regular meetings of the City Council and give his or her opinion in writing whenever requested to do so by the City Council or by any of the boards or officers of the City;

(d)(4) Approve the form of all contracts made by and all bonds given to the City, endorsing approval thereon in writing;

(e)(5) Prepare any and all proposed ordinances or resolutions for the City, and amendments thereto;

(f)(6) Prosecute, if so directed by ordinance of the City Council, all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required by law, and shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the State laws occurring within the City limits of the City of Chula Vista for offenses constituting misdemeanors;

(7) Whenever a cause of action exists in favor of the City, exercise discretion as to when to commence or maintain legal proceedings, subject to the approval or ratification by the City Council, when the basis for such action is within the knowledge of the City Attorney, or, he or she shall commence or maintain legal proceedings as directed by the City Council;

~~*(g) Devote such time to the duties of office as may be specified in the ordinance or resolution fixing the composition for such office; and*~~

(h)(8) Surrender to his or her successor all books, papers, files and documents pertaining to the City's affairs.

PROPOSED CHARTER AMENDMENT (Continued)

The Council may empower the City Attorney, at his or her request, to employ special legal counsel, and he or she shall have the power to appoint appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorney's recommendation and the approval of the Council, when he or she has a conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense. Nothing in this Section 503 shall be construed to prevent the City Attorney from giving confidential advice to the City when otherwise allowed by law.

~~The City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein.~~

(c) Election; Compensation of City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as a member of the City Council, except as otherwise provided in this section. The compensation of the elected City Attorney shall be set by the Council, but shall be not less than the median compensation paid to the City Attorneys of the six California cities whose populations are closest to that of the City of Chula Vista, provided that three are higher and three are lower in population, and that compensation may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion. The City Attorney shall be in the Unclassified Service.

(d) Qualifications of City Attorney. No person shall be eligible for or continue to hold the Office of City Attorney, either by election or appointment, unless he or she is a citizen of the United States, a qualified elector, and a California resident, licensed to practice law in all courts of the State of California and so licensed for at least seven years preceding his or her assumption of office following election under this charter.

(e) Term of Office of the City Attorney. The City Attorney shall be elected to a nominal term of four years and shall commence on the first Tuesday of December of the year of the election, and shall continue until a successor qualifies.

(f) Vacancy, Filling of. Upon the declaration of vacancy in the Office of the City Attorney, the Office of the City Attorney shall be filled by appointment by the majority vote of the members of the Council; provided, that if the Council shall fail to fill a vacancy by appointment within sixty days after such office shall become vacant, or if the unexpired term of the City Attorney shall exceed 24 months at the time of the appointment, the City Council shall cause a special election to be held to fill such vacancy. An appointee or the person elected to the Office of City Attorney for the balance of an unexpired term shall hold office until the next general election for the Office of the City Attorney.

(g) Vacancy, What Constitutes. The Office of City Attorney shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his or her term is to begin, dies, resigns, ceases to be a resident of the State or absents himself or herself continuously from the State for a period of more than thirty days without permission from the Council, absents himself or herself from any seven consecutive regular meetings except on account of own illness or when absent from the City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his or her office, forfeits his or her office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least two-thirds of the members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Attorney.

B. Section 500 of the Charter of the City of Chula Vista is hereby amended as follows:

500. Election, Appointment and Removal of Officers and Department Heads

*(a) Election; **Appointment.** The City Attorney shall be elected by the voters of the City. The City Manager, City Attorney and City Clerk shall be appointed by and serve at the pleasure of the City Council and shall be in the Unclassified Service. In addition, there shall be in the Unclassified Service a private secretary for the City Manager, City Attorney and the Mayor and Council who shall be appointed by the respective officers for whom they serve. All other officers and department heads of the City and the Assistant City Manager shall be appointed by the City Manager subject to the approval of the City Council. The City Attorney shall also appoint Assistant or Deputy City Attorneys as may be authorized by the Council, who shall be in the Unclassified Service. The City Clerk may also appoint Assistant or Deputy City Clerks as may be authorized by the Council subject to the approval of the Council who shall be in the Unclassified Service. It is further provided the City Council may, by ordinance, place Assistant and Deputy Department Heads, Assistants to the City Manager and new management level positions in the Unclassified Service by a four-fifths vote of the Council.*

PROPOSED CHARTER AMENDMENT (Continued)

(b) **Removal.** Officers and employees in the Unclassified Service appointed by the City Council may be removed by them at any time by a majority vote of the members of the Council, and such officers and department heads in the Unclassified Service appointed by the City Manager or City Attorney, respectively, may be removed by him or her at any time and, in the case of appointees in the Unclassified Service, the order of the City Council, the City Attorney, or the City Manager affecting said removal shall be final and conclusive. The position of said officers and employees shall be declared vacant if said officer or employee is convicted of a felony or crime involving moral turpitude. Any appointee or employee in the Unclassified Service so removed by the City Manager, the City Attorney or City Clerk may, however, within five (5) days after receipt of a notice of dismissal, demand a written statement of the reason for such dismissal, a copy of which shall be forthwith filed with the City Council. Upon receipt of such written statement so furnished by the City Manager, the City Attorney or City Clerk to the City Council, the Council shall fix a time and place for a public hearing, at which hearing the Council shall have authority to investigate the facts set for the in said written communication from the City Manager, the City Attorney or City Clerk containing the reason for said dismissal, and determine the truth or falsity of said facts. Council shall report its findings and recommendations made as a result of such hearing, and cause a copy of said findings to be delivered to the City Manager, the City Attorney or City Clerk and file the original with the City Clerk. The dismissed appointee or employee in such cases shall have the right to file with the Council a written reply or answer to any charges filed by the City Manager, the City Attorney or the City Clerk. All written documents, including the City Manager's, the City Attorney's or the City Clerk's written reasons for such dismissal, and the reply of the dismissed appointee or employee, the findings and decisions of the Council, and any documentary evidence used at the hearing shall be filed with the proper office of the City as public records, open for inspection at any time. Nothing herein contained, however, shall be construed as in any way limiting the authority and power of the City Manager, the City Attorney or the City Clerk to remove any appointee or employee in the Unclassified Service of the City, so appointed or employed, and all such removals shall be final and conclusive.

(c) *No fiscal impacts. Except as expressly provided in Section 503, nothing in this Section 500 shall be construed to limit the budgetary authority of the City Council as respects the officers and employees under the supervision of the City Attorney.*

Section 3. Implementation

A. Upon the effective date of this initiative, the provisions of this initiative shall be inserted into the Charter as amendments thereto. Any provisions of City Charter, state law or city ordinances inconsistent with these amendments shall be unenforceable to the extent of the inconsistency.

B. The City Attorney serving at the time of the adoption of this initiative, or his or her successor(s) shall continue to be qualified to hold such office, and shall carry out the duties and be authorized to continue to exercise any and all powers of that office under the terms and conditions of this Charter and general law existing prior to the adoption of this initiative, until his or her successor is qualified and assumes office by election or appointment as a result of the next general election.

Section 4. Severability.

If any word, sentence, paragraph, subparagraph, section or portion of this initiative is declared to be invalid by a court, the remaining words, sentences, paragraphs, subparagraphs, sections and portions are to remain valid and enforceable.

Section 5. Amendment or Repeal.

This initiative may be amended or repealed only by the voters at a City election.

Section 6. Effective Date.

If a majority of the voters voting on the proposed charter amendment vote in its favor, the charter amendment shall become valid and binding upon filing by the California Secretary of State.